IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 128 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREMNATH H KASHYAP

Versus

STATE OF GUJARAT

Appearance:

MRS SHILPA J UNWALLA for Petitioner

MR SAMIR J DAVE, AGP for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/04/2001

ORAL JUDGEMENT

#. Heard leaned counsel for the parties.

#. By this petition under Article 226 of the

Constitution of India, the petitioner is praying for direction directing the CBI or any other independent agency to further investigate into the charges levelled against the applicant and further prayed to direct the respondent No.2 to hand over all the documents of the investigation, said to have been carried out by them in this connection to the agency directed by this court. Second prayer has been made to call for the record and proceedings of the sessions Case No.39 of 1999 pending before the Hon'ble Sessions Court, Ahmedabad, in connection with the complaint filed against the applicant under the N.D.P.S. Act. The facts of the case are that the applicant is in jail since 11.9.1998 at Nagpur for alleged offences of cheating under Section 420 of IPC. During the period of judicial custody of the applicant at Nagpur the respondent No.2 raided his residential premises at Ahmedabad on 21.11.1998. In this raid what it is stated that in the brief case of the applicant 80 gm. of mandrox was found. It is the case of the respondent that this mandrox was brought from Nagpur by the nephew of the applicant to be handed over to applicant's wife. It is the say of the applicant that at the time of the raid of his house of at Ahmedabad mandatory provisions of NDPS Act were not adhered to. On the contrary, wife and nephew were unnecessarily beaten and illegally detained in another room. Mandrox was sealed in the polyethylene bags. It is the grievance of the applicant that the respondents have also obtained statement of his wife by threat and coercion. So, it is the case of the applicant that a false case has been registered. This matter was admitted after notice to the respondents. The learned counsel for the respondents submitted that it is case where during the raid of the house of the applicant, 80 gm. of mandrox was found from his brief case. In case the respondents would have as what it is complained acted arbitrarily, wife and other family members of the applicant could have also been arrested. From the fact that other persons are not arrested goes to show that the respondent No.2 has acted in most reasonable and fair manner. Secondly it is submitted that in the raid of the house the material provisions of NDPS Act has been complied with. Be that as it may be. It is a matter of trial and only on the basis of these allegations made by the applicant in case the investigation is transferred to other agency it will demoralize the respondent No.2.

#. Having gone through the contents of the petition as well as arguments advanced by learned counsel for the applicant, I am satisfied that it is not a fit case where as what it is prayed by the applicant has to be granted.

The respondent No.2 has registered a case against the applicant and the applicant is interested person and there is all possibility that he may raise and make any allegation and grievance. The learned counsel for the applicant submitted that the respondents acted malafide in the matter and this case is result of that malafide. However, on being put by the court the learned counsel for the applicant fairly conceded that the wife of the applicant and any of his relation have not filed any complaint against respondent No.2. In these facts, though prima facie it is difficult to accept what it is contended to be correct, otherwise also it is not advisable to give finding and decision on this aspect, at this stage. If this course is adopted it may prejudice the case of the accuse or the prosecution in the trial. Where the mandatory provisions of the Act are not been complied with certainly this matter will be considered in the trial. But it may not be a ground for transfer of investigation. Having gone through the contents of the application, I do not find any ground to transfer the investigation to some other agency as prayed for by the applicant.

#. In the result, this Special Criminal Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J.)
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